IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

CENTRAL EXCISE APPEAL NO.36 OF 2006

The Commissioner of Central Excise &
Customs Daman, Vapi. Appellant
vs.
M/s.Ajay Products P.Ltd.
(Formerly Bakre P. Ltd.). Respondent

Mr.A.S.Rao i/b.Mr.Pankaj Kapoor for the appellant.

**CORAM : R. M. LODHA &**
**J. P. DEVADHAR,JJ**.

**DATED : 4th April, 2006**

**P.C.**

Heard.

2. Section 35B of the Central Excise Act, 1944 reads thus:

> **35B. Appeals to the Appellate Tribunal.- (1)** Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order-
>
> (a) a decision or order passed by the Commissioner of Central Excise as an adjudicating authority;
>
> (b) an order passed by the Commissioner (Appeals) under section 35A;
>
> (c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Comissioner of Central Excise under Section 35, as it stood immediately before the appointed day;
>
> (d) an order passed by the Board or the

Commissioner of Central Excise, either before or after the appointed day, under section 35A, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods, exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No.2) Act, 1998:)

Provided further that the appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -

(i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(ii) the amount of fine or penalty determined

by such order, does not exceed fifty thousand rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of section 47 of the Finance Act, 1984 (21 of 1984), before the Appellate Tribunal and any matter arising out of, or connected with, such appeal and which is so pending shall stand transferred on such commencement to the Central Government, and the Central Government shall deal with such appeal or matter under section 35EE as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(2) The Commissioner of Central Excise may, if he is of opinion that an order passed by the Appellate Comissioner of Central Excise under section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on his behalf to the Appellate Tribunal against such order.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Central Excise, or, as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3)

or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made on or after the Ist day of June, 1993, irrespective of the date of demand of duty or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, -

(a) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;

(b) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than one lakh rupees, one thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

3. The Deputy Commissioner, Central Excise vide order in original dated 30th April, 2003 ordered recovery of the Central excise duty amounting to Rs.23,611.80 ps. from M/s.Bakre Drums & Barrels Pvt.Ltd. and also a penalty of Rs.10,000/- on them. M/s.Bakre Drums & Barrels Pvt.Ltd. is now Ajay Products Pvt.Ltd. (respondent). They filed appeal to the Commissioner of Appeals under Section 35A of the Central Excise Act.

4. The Commissioner of Appeals set aside the order dated 30th April, 2003 passed by the Deputy Commissioner, Central Excise, North Daman.

5. The revenue preferred second appeal before the Customs, Excise & Service Tax Appellate Tribunal, West Regional Bench at Mumbai against the order dated 30th June, 2004 in appeal passed by the Commissioner of Appeals.

6. The Tribunal rejected the appeal on the ground that no substantial question of law was involved.

7. Second proviso to Section 35B as aforenoticed would show that the Tribunal may refuse to admit an appeal from an order passed by the Commissioner of Appeals under Section 35A, if the duty involved or the amount of penalty does not exceed Rs.50,000/-. In the present case, as per the order in original, the duty involved was to the extent of Rs.23,611.80 ps. and amount of penalty was Rs.10,000/- which is less than Rs.50,000/-. In this backdrop, if the Tribunal refused to admit the appeal, it cannot be said that any error has been committed warranting interference by this Court.

8. Appeal is dismissed in limine.

**(R.M. LODHA,J.)**

**(J.P. DEVADHAR,J.)**